

Office of Public Insurance Counsel Report to the 87th Texas Legislature



Recommendations Report | December 2020



OFFICE OF PUBLIC INSURANCE COUNSEL

Melissa R. Hamilton, Public Counsel

December 30, 2020

The Honorable Governor of the State of Texas
The Honorable Lieutenant Governor of the State of Texas
The Honorable Speaker of the Texas House of Representatives
The Honorable Members of the 87th Texas Legislature

Dear Governors, Speaker, and Honorable Members of the 87th Texas Legislature:

In accordance with Insurance Code Section 501.155, I am pleased to submit the recommendations report for the Office of Public Insurance Counsel (OPIC).

Texas law allows OPIC's public counsel to "recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers." Insurance Code Section 501.155. The two recommendations contained in this report follow that statutory directive and are presented for your consideration.

Thank you for the opportunity to provide this report and information. Please contact me at (512) 322-4144 or mhamilton@opic.texas.gov, if you have any questions or would like additional information.

Sincerely,

Melissa R. Hamilton
Public Counsel



Introduction

The Texas Legislature established the Office of Public Insurance Counsel (OPIC) in 1991 and codified the agency's duties in Chapter 501 of the Insurance Code. OPIC represents the interests of Texas consumers in insurance matters. OPIC fulfills its statutory duties through action on regulatory matters, consumer education and outreach, and serving as a resource for the Texas Legislature.

OPIC's Duties

Regulatory Matters. OPIC represents the interests of consumers before the Texas Department of Insurance (TDI) on regulatory matters relating to insurance rates, rules, and policy forms. OPIC makes formal comments and objections to TDI on these matters, and when prudent, intervenes as a party in rate hearings before the Commissioner of Insurance and the State Office of Administrative Hearings. OPIC also engages with TDI and stakeholders directly through informal dialogue to achieve positive results for Texas consumers on rates, rules, and policy forms.

Consumer Education and Outreach. One of OPIC's most important duties is consumer education and outreach. OPIC submits to TDI for adoption consumer bills of rights that advise consumers of their rights under Texas law.¹ The agency is also required to develop an annual consumer report card on the quality of care, and consumer satisfaction with, Health Maintenance Organizations (HMOs) in Texas.² In addition, OPIC creates informational postcards and brochures.

OPIC primarily uses its website and social media applications – Facebook and Twitter – to increase consumer education and outreach. The agency develops new website content each year to assist consumers with insurance shopping, claims handling, and general education. OPIC also created an online policy comparison tool that helps consumers compare policies and coverage when shopping for property or auto insurance. This tool is updated and improved every year.

Additionally, OPIC's subject matter experts provide direct consumer assistance over the phone and via email on a daily basis.

Legislative Resource. OPIC serves as a resource to the Texas Legislature during the legislative session and in the interim by providing witness testimony, answering legislators' inquiries, reviewing bills, and producing reports and other insurance-related information.

OPIC's Budget Structure

Sections 501.201-205 of the Insurance Code set a fee of 5.7 cents assessed on certain insurance policies. Of that fee, OPIC receives about 27%, or \$850,579. The remaining \$2,346,983 goes to the State's General Revenue Fund. The other portion of OPIC's funding comes from an interagency contract with TDI for \$191,670. That \$191,670 comes from insurers' maintenance taxes, which are appropriated to TDI and passed through to OPIC via the contract. Combined, OPIC's annual operating budget is \$1,042,249.

OPIC works hard to maximize its funding and operate both effectively and efficiently. Our efforts have produced notable results. OPIC savings to consumers due to rate actions alone exceeds \$130 million since FY 2018. This compares to the agency's combined budget of approximately \$3.5 million over the same time period.

¹ Insurance Code Section 501.156, Insurance Code Sections 501.251.

² Insurance Code Sections 501.251 and 252.

2020 Highlights

Consumer Savings. OPIC is a small agency, with only 10 Full Time Employees, but we produced significant results for consumers this year. In 2020, OPIC analyzed over 1,400 rate, rules, and policy forms. These efforts saved consumers approximately \$85 million.

Auto Rate Objections During COVID-19 Pandemic. OPIC has been objecting to auto rate increases during the pandemic. These efforts have resulted in companies either withdrawing their rate increases, re-filing at lower rates, and/or refunding premium. OPIC has saved Texas drivers over \$80 million since the beginning of the pandemic.

Prevented Reductions in Coverage. OPIC worked with TDI and insurance companies throughout the year to prevent reductions in coverage on auto and residential property policies. OPIC reviewed hundreds of policy forms and more than 45 changes were made to protect consumers based solely on OPIC's involvement.

Reduced Use of Criminal History to Rate Drivers in Auto Market. OPIC continued objecting to the use of old and minor offenses, such as a violation for a barking dog, to improperly set the cost of auto insurance for drivers, because those offenses don't have a direct correlation to accident risk. After this work, only a handful of companies still use non-driving-related criminal history to rate drivers. OPIC continues to address this issue to make sure auto rates are fair to Texas drivers.

COVID-19 Web Resources. OPIC created a COVID-19 FAQ page to help consumers navigate all of the information about the pandemic, and an article with resources for small business owners affected by the pandemic.

Legislative Recommendations

In accordance with its statutory authority under Chapter 501 of the Insurance Code, OPIC produces this report to recommend legislation to the Texas Legislature that would positively affect the interests of insurance consumers.³ This report contains two recommendations: (1) require all personal auto insurers to provide actuarial support for their rates, and (2) increase access to broadband internet service throughout Texas to allow insurance consumers to take full advantage of the resources available to them. Those recommendations are set forth in the following pages of the report.

³Insurance Code Section 501.155.

Recommendation 1

Protect Texas consumers by repealing Section 2251.1025 of the Insurance Code, which exempts certain auto insurers from filing actuarial support for their rates.

Issue

Section 2251.1025 of the Insurance Code allows the commissioner to create limited rate filing requirements for certain auto insurers that write less than 3.5% of the personal auto insurance market in the state and exclusively write policies with the minimum state liability limit requirements. As allowed by this statute, Texas Administrative Code, Title 28, Section 5.9357, exempts these insurers from filing actuarial support for the rates they charge policyholders.

This exemption limits OPIC's and TDI's ability to monitor these insurers' rates for compliance with state law, or in other words, to make sure their rates are not inadequate, excessive, unreasonable, or unfairly discriminatory.¹ While TDI can still require these insurers to provide certain kinds of actuarial support on an ad hoc basis, there is no uniform applicability in what is required and for which filings because of the exemption. Moreover, the current file and use system makes this delayed receipt of information problematic for thorough and timely rate review.

The personal auto market in Texas has changed quite a bit since Section 2251.1025 was created in 2007. Over time, these exempt insurers have grown to write close to \$1 billion in annual premium. If combined, they would comprise the 8th largest auto insurer in Texas.

Given the premium and policyholder growth of these companies and the vulnerable markets they often serve, OPIC recommends repealing Section 2251.1025 of the Insurance Code. The repeal of this section would make the companies subject to the same actuarial support requirements for rate filings as the other personal auto companies writing in the state. This change would create consistency in the market and also allow OPIC and TDI to better monitor the rates of these insurers to ensure they are in compliance with statutory rate standards.

Recommendation

Repeal Section 2251.1025 of the Insurance Code.

¹ Insurance Code Section 2251.052.

Recommendation 2

Improve consumer access to insurance resources by expanding access to broadband internet service in Texas.

Issue

OPIC, as well as other state agencies and consumer organizations, provides helpful resources to Texas insurance consumers via our website and social media applications. OPIC also receives and answers consumer and agent concerns via our website portals. In addition, insurers often use their websites and company applications to both provide information to consumers and to help consumers more quickly communicate with them on issues like filing a claim. Whenever access to reliable, high-speed internet service is compromised or limited, consumers' access to these insurance resources is similarly compromised or limited.

Recommendation

OPIC is not a broadband or utility expert, and accordingly, does not offer specific draft language for legislation. We do, however, believe access to Internet resources, such as those provided by our agency, are vital to helping Texas insurance consumers. Accordingly, OPIC supports efforts made by the Texas Legislature to increase and improve access to broadband internet service throughout the state.

